IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

WP(C).No. 7596 of 2007(D)

OS.7/1986 of PRINCIPAL SUB COURT,PARAVUR

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PETITIONER:

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1. SARASWATHY AMMA, AGED 92,
   W/O.AMMINI PANICKER, ANANDA BHAVAN,
   THUNDATHUMKADAVU, VARAPUZHA.

2. THANKAMANI AMMA, AGED 63,
   D/O.AMMINI PANICKER, GEETHA BHAVAN,
   THUNDATHUMKADAVU, VARAPUZHA.

3. ANANDAVALLY AMMA, AGED 58,
   D/O.AMMINI PANICKER, ANANDA BHAVAN,
   ERUMATHALA P.O., ALUVA.

4. MURALIDHARAN ELAYIDEM, AGED 54,
   S/O.AMMINI PANCIKER, VRINDAVANAM,
   THUNDATHUMKADAVU, VARAPUZHA.

5. SREENATH ELAYIDEM, AGED 48,
   S/O.AMMINI PANICKER, NANDA BHAVAN,
   THUNDATHUMKADAVU, VARAPUZHA.

6. REMADEVI, AGED 51, D/O.AMMINI PANICKER,
   VRINDAVANAM, THUNDATHUMKADAVU, VARAPUZHA.

BY ADV. SRI.P.N.RAMAKRISHNAN NAIR
SRI.P.VISWANATHAN

RESPONDENTS:

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1. SASIDHARA MENON, AGED ABOUT 52,
   S/O.LATE P.R.BALAKRISHNA PANICKER,
   NAMMANARIL HOUSE, KARICODE DESOM,
   MULANTHURUTHY VILLAGE, KANAYANUR TALUK.

2. DEVALATHIKA, AGED 50,
   D/O.LATE P.R.BALAKRISHNA PANICKER,
   NAMMANARIL HOUSE, KARICODE DESOM,
   MULANTHURUTHY VILLAGE, KANAYANNUR TALUK.

3. N.B.MALATHI, AGED 46,
D/O.LATE P.R.BALAKRISHNA PANICKER, NAMMANARIL HOUSE, KARICODE DESOM, MULANTHURUTHY VILLAGE, KANAYANNUR TALUK.

4. N.B.NANDHINI, AGED ABOUT 43,
D/O.LATE P.R.BALAKRISHNA PANICKER, NAMMANARIL HOUSE, KARICODE DESOM, MULANTHURUTHY VILLAGE, KANAYANNUR TALUK.

5. N.B.RADHAKRISHNAN, ABOUT 32,
S/O.LATE P.R.BALAKRISHNA PANICKER, NAMMANARIL HOUSE, KARICODE DESOM, MULANTHURUTHY VILLAGE, KANAYANNUR TALUK.

6. N.B.JAYACHANDRAN, ABOUT 30,
S/O.LATE P.R.BALAKRISHNA PANICKER, NAMMANARIL HOUSE, KARICODE DESOM, MULANTHURUTHY VILLAGE, KANAYANNUR TALUK.

7. RAVEENDRA NATHA PANICKER, AGED ABOUT 52, S/O.PADMAVATHI AMMA, NOW RESIDING AT BHAVANA KRISHNA SREE, NANDIATTUKUNNAM, NORTH PARUR.

8. VIJAYAKUMARA PANICKER AGED ABOUT 58,
S/O.PADMAVATHI AMMA, NOW AT THITTAYIL VEEDU, PERUVARAM, NORTH PARUR.

9. SOMASUNDARA PANICKER, AGED ABOUT 60,
S/O.PADMAVATHI AMMA, BHAVANA, THAIPARAMBU HOUSE, VALLUVALLY KARA, KOONAMMAVU.

10. VALSALAKUMARI AMMA, AGED ABOUT 52,
D/O.PADMAVATHI AMMA, BHAVANA, THAIPARAMBU HOUSE, VALLUVALLY KARA, KOONAMMAVU.

11. SATHYABHAMA AMMA, AGED ABOUT 58,
D/O.PADMAVATHI AMMA, ESTABLISHMENT SECTION, NATIONAL GEOGRAPHICAL RESEARCH INSTITUTE, UPPAN ROAD, HYDRABAD, ANDRA PRADESH.

12. SOUDHAMINI AMMA, AGED ABOUT 48,
D/O.PADMAVATHI AMMA, PAVANA, THAIPARAMBIL HOUSE, VALLUVALLY KARA, KOONAMMAVU PO.

13. LALITHAMBIKA AMMA, AGED ABOUT 45,
D/O.PADMAVATHI AMMA, PAVANA, THAIPARAMBU HOUSE, VALLUVALLY KARA, KOONAMMAVU P.O.

14. ARAVINDAKSHAN, AGED ABOUT 47,
S/O.PADMAVATHI AMMA, PAVANA, THAIPARAMBU HOUSE, VALLUVALLY KARA, KOONAMMAVU P.O.

15. GEETHAMANI AMMA, AGED ABOUT 44,

D/O.PADMAVATHI AMMA, NOW RESIDING
AT MANIKANTAN, VAZHAKKALA, KAKKANAD.

16. A.KRISHNA RAJAN, ELAYIDEM, AGED ABOUT
65, S/O.AMMINI PANICKER, UPANISHATH,
THUNDATHUMKADAVU KARA, VARAPUZHA VILLAGE.

17. KUMARI @ RAJAKUMARI, AGED ABOUT 42,
D/O.LATE OMANA AMMA, NAMMANARIL HOUSE,
KARIKKODE KARA, MULANTHURUTHY P.O.,
ERNAKULAM DISTRICT.

18. INDIRA @ VIJAYALAKSHMI, AGED ABOUT
40, D/O.LATE OMANA AMMA, NAMMANARIL HOUSE,
KARIKKODE KARA.

19. MANI @ RAJENDRAN, AGED ABOUT 39,
D/O.LATE OMANA AMMA, NAMMANARIL HOUSE,
KARIKKODE KARA, MULANTHURUTHY P.O.,
ERNAKULAM DISTRICT.

R1 TO 6 BY ADV. SRI.S.SHYAM
R16 TO 19 BY ADV SRI.BOBBYMATHEW KOOTHATTUKULAM
R9, 13 & 14 BY ADVSRI.V.RAJENDRAN (PERUMBAVOOR)
SRI.GEORGE VARGHESE KIZHAKKAMBALAM
R12 BY ADV SRI.DINESH R.SHENOY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE PHOTOSTAT COPY OF THE DECREE DT.29.7.1987 IN O.S.NO:7 OF 1986 ON THE FILE OF THE PRINCIPAL SUB COURT, NORTH PARAVOOR

EXT.P2; -DO- PASSED IN A.S.NO:645/93 ON THE FILE OF THE HONOURABLE HIGH COURT OF KERALA

EXT.P3: -DO- OF THE INTERIM REPORT SUBMITTED BY THE ADVOCATE COMMISSION, I.A.3649/00 IN O.S.7/86

EXT.P3A: -DO- OF THE SKETCH SUBMITTED BY THE ADVOCATE COMMISSIONER

EXT.P4: -DO- OF I.A.2089/06 IN O.S.7/86 ON THE FILE OF THE PRINCIPAL SUB COURT, NORTH PARAVOOR

EXT.P5: -DO- OF THE OBJECTION

EXT.P6: -DO- OF THE ORDER DT.16.10.2006

jj /TRUE COPY/

PA. TO JUDGE

M.N.KRISHNAN, J.

WP(C)No.7596 OF 2007 D

Dated this the 21st June, 2007.

JUDGMENT

This writ petition is filed seeking to set aside the order Ext.P6 passed in I.A.2089/06 in O.S.7/86. The suit is one for partition and there has been a preliminary decree determining the right of the parties. In pursuance of the preliminary decree an application has been filed and the commissioner has gone and inspected the property and submitted his plan and report. The commissioner has reported that the extent of the property and the survey number of the property does not really tally but according to him by description of the boundaries it can be seen that there is property which is not covered by survey number to be partitioned among the parties. It is a settled proposition that properties are identifiable by boundaries, descriptions and survey number and when there is a discrepancy with respect to the measurement or survey number boundaries will prevail. The parties have never approached the court in the preliminary stage stating that some of the properties belong individually to members and it is not partible. It appears that it is only a mistake that has crept in the plaint and it should not be taken advantage by any party. Therefore, the learned Subordinate

Judge should not have simply dismissed the application directing the division of the property in accordance with the preliminary decree. If the preliminary decree items take in this property also, then it has to be divided and it was precisely for that purpose the commissioner sought direction from the court. Without adverting to the same from the correct angle the Subordinate Judge has simply disposed of the matter which is not in accordance with law. Therefore, the order of the Subordinate Judge is set aside and the matter is remitted back to him with a direction to hear the parties and pass an order in the report of the commissioner bearing in mind the observations made by this Court in the previous paragraph of the judgment. Parties are directed to produce a copy of this judgment for further proceedings. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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